

Exhibit B

1 **TRANSCRIBED FROM DIGITAL RECORDING**

2 IN THE UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

4 JAN DOMANUS, et al.,)
5 Plaintiffs,)
6 vs.) No. 08 C 4922
7 DEREK LEWICKI, et al.,) Chicago, Illinois
8 Defendants.) November 23, 2011
) 10:07 A.M.

9 TRANSCRIPT OF PROCEEDINGS - Status
10 BEFORE THE HONORABLE NAN R. NOLAN, Magistrate Judge

11 **APPEARANCES:**

11 For the Plaintiffs: ROBINSON, CURLEY & CLAYTON, P.C.
12 300 South Wacker Drive, Suite 1700
13 Chicago, Illinois 60606
 BY: MR. ROBERT SCOTT MICHAELS

14 For the Individual FUKSA KHORSHID LLC
15 Defendants: 70 West Erie, 3rd Floor
 Chicago, Illinois 60654
 BY: MR. LUCAS M. FUKSA

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17 111 South Wacker Drive
18 Chicago, Illinois 60606
 BY: MR. DANIEL I. SCHLESSINGER

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22 **NOTE: Please notify of correct speaker identification.**
23 **FAILURE TO SPEAK DIRECTLY INTO THE MICROPHONE MAKES PORTIONS**
24 **UNINTELLIGIBLE.**
25

1 first ordered to produce them by August. I mean, there again,
2 the only thing that I am concerned about here is moving forward
3 in a way that is reasonable but that does not necessarily
4 reward the defendants for the extraordinary delay that they
5 have already caused. So --

6 MR. FUKSA: I mean, one of the things I want to bring
7 up too, Judge, is my wife is giving birth to our first in
8 March. So I definitely have to be around some time around that
9 time. I am not saying, you know, for months. But that's one
10 of my concerns. I would like to do them after that time.

11 THE COURT: Uh-huh.

12 MR. FUKSA: And because I don't really want to take
13 any risk, you know, with a baby --

14 THE COURT: Right.

15 MR. FUKSA: -- that's born earlier.

16 And I think in that regard, you know, by the time we
17 get through our discovery process, I know I'm -- I'm also
18 positive I'll have additional written discovery to issue,
19 especially with respect to these gentlemen that are
20 (unintelligible) witnesses because I don't see much information
21 that I have received in that regard.

22 So by the time we get through that, and with the --
23 with all the written, including the document production and
24 review of them, maybe that would be a timely manner in which to
25 look at it from that point being after -- some time after

1 March.

2 MR. MICHAELS: Judge, needless to say that that would
3 be -- we would strenuously object to pushing these into the
4 spring. This case -- if the discovery cutoff that I know is
5 probably not going to be met now, but was set for April, and
6 this -- allowing the -- postponing any depositions in this case
7 till April would -- you know, would be just an incredible
8 reward to these defendants for grinding this case to a halt.

9 They have had ages to send written discovery. They
10 sent detailed -- they sent, you know, 60-some interrogatories
11 to us, and I gave to the Court. We submitted like over 100 of
12 extraordinarily detailed responses to those. We obtained these
13 documents from the prosecutor's office that I mentioned last
14 time. My clients have agreed to provide it free of charge to
15 both parties. They are going to get in next week on a hard
16 drive. And it is far fewer -- I think it is far fewer pages
17 than I had originally -- I had originally thought. We have
18 done everything we possibly could to facilitate the progress in
19 this case.

20 And they want to bring it to a halt again while they
21 are pulling out all the stops (unintelligible) to further
22 injure us, further (unintelligible) of (unintelligible) and
23 further deplete the company's assets. We just could not in any
24 way countenance this postponing the depositions till the
25 spring.

1 MR. FUKSA: You know, this continued excuse of that
2 they are causing so much harm, if that's how they feel, they
3 could request injunctive relief. Because, honestly, if what
4 they wanted to do would be to imposed, then their shareholders,
5 the plaintiffs would be in a much, much worse position with
6 respect to the future value of this company.

7 Now I -- furthermore, I only want to be able to get
8 through written discovery. And I don't know why Mr. Michaels
9 would want to proceed with depositions for -- when I haven't
10 even delivered all the -- our discovery documents. And I am --
11 and I will continue to get them from my clients. These are
12 documents that whether they have gotten from Poland. My
13 client, Mr. Lewicki, again is traveling there. I believe he is
14 leaving on Monday. And I only want to have fair disclosure of
15 these documents so that not only they can benefit from it, but
16 we can also.

17 I don't want to later sit -- have an issue stating
18 that, you know, well, these documents we're not going to be
19 able to use at trial because they weren't produced prior to the
20 depositions, therefore, I didn't get a chance to utilize them
21 at that time.

22 MR. MICHAELS: Judge, a couple of thoughts in response
23 to that.

24 First, if we -- we indeed are going to have to seek
25 injunctive relief. However, some of the witnesses -- if

1 Mr. Fuksa would stipulate that we could use declarations in the
2 -- instead of deposition testimony in seeking the injunction,
3 then that would be something that we could think about in terms
4 of postponing some of these depositions.

5 The other point here is that I'm not saying, let's
6 depose everybody before the baby is born. Obviously there is
7 -- there are plenty of witnesses to depose here. Some of them
8 like the parties, we're going to want to do later.

9 But to say no depositions should go forward
10 until -- until the spring and -- and, oh, by the way, good luck
11 with that injunction when you don't have any evidence because
12 we delayed the depositions. I mean, we just can't -- can't
13 countenance that state of affairs.

14 MR. FUKSA: With respect to depositions, if anything,
15 maybe we could have the ones that are here in the United States
16 prior to that time. Therefore I don't have to worry about, you
17 know -- even if it takes us -- even if we need to do it during
18 March or so, I at least am comfortable that I am here, and we
19 could, for example, do those depositions then. I really am
20 just concerned about leaving the country. That's it. I'm --

21 THE COURT: Well, you know, I think -- all right. In
22 a couple -- I'm just going to throw this out here, because you
23 guys are still not talking to each other enough before you
24 come, and then you're bringing up these topics, and I'm saying
25 things off the top of my head. So let the transcript reflect

1 this is an idea off the top of my head.

2 All right. In patent cases and copyright cases, what
3 we have been successful in doing, sometimes in lieu of a TRO or
4 an injunction, is to get an agreement between the parties.

5 Okay? I mean, one of the things your folks -- nobody is going
6 to take their money, I would imagine -- I don't know what
7 Mr. Michaels's injunction would look like, okay, or TRO.

8 But it would probably -- I think what he's concerned
9 about are all the assets are going to be gone, all the money in
10 the bank accounts are going to be gone, and there is going to
11 be -- in the event they get a judgment, there is going to be no
12 way to pay the judgment.

13 If you are going to need an extensive period of time
14 to complete all this, you are not -- you, Mr. Fuksa, are not
15 to, quote unquote, blame at all. Okay? I think you have done
16 a really wonderful job since you have been in the case. But
17 you can look at the docket, what your clients's former lawyers
18 did. Okay? And we are not our brother's keeper. But in a
19 way, you know, between them and these lawyers, there is a mess
20 here.

21 Part of it is Mr. Michaels's personality and just
22 wanting to move along. Okay. That's true too. But there is a
23 concern in a case that involves taking people's money and then
24 they are not getting a full return. That's all I'm saying is
25 there is a concern that there will be no money at the end.

1 Okay?

2 So I don't know before our next status if you'd want
3 to talk to your clients and say are they willing to some kind
4 of -- you know, I'm not even -- I don't want to even go -- is
5 there some kind of transparency that could go on so the
6 plaintiffs could be assured, you know, withdrawals more than
7 \$25,000 -- I don't know. I -- I'm not the lawyer in the case.
8 Okay?

9 MR. FUKSA: With respect to this whole -- from day one
10 the concern was, and what continues to be, is Mr. Adam Swiech,
11 for example, he's the one that's been contributing all this
12 capital and continues to contribute it in order for the company
13 to survive. Their only concern is as a result of that, our
14 shareholders, our clients, are being deluded.

15 You know what, that's how it goes.

16 MR. MICHAELS: Well --

17 MR. FUKSA: And if this -- and I'm confident that what
18 will become clear soon enough is that there were -- the many
19 things that are complained of and alleged have not only been
20 agreed upon by Mr. Michaels's clients, but they have been
21 actually created and organized by Mr. Michaels's clients in
22 order to avoid having to contribute capital and therefore
23 bypass having to do that. So I think there is absolutely zero,
24 zero legitimacy to this.

25 It is not the spending of money, it is more the

1 con- -- the capital contribution of money that would then
2 dilute any shareholder who is not going to contribute capital.

3 MR. MICHAELS: Sorry. I very much need to respond to
4 that.

5 The first point is, yes, we are concerned in part
6 about the further contributions of, quote unquote, by Adam
7 Swiech. The problem is virtually penny of capital that the man
8 has contributed to the company over the years has been stolen
9 from the company. That's what we allege. That's what the
10 Polish authorities are prosecuting him for. And that's what
11 the documents that we have attached, including to your pending
12 motion, clearly show.

13 So our concern is that Mr. Swiech has these loans that
14 he made with money that had been -- you can see it right in the
15 documents we filed. Money comes out of KBP, and within three
16 days it goes to the, quote unquote, vendor who supposedly con-
17 (unintelligible) did the services. It goes right back to Adam
18 Swiech's pocket, and he makes the loan to KBP.

19 That loan is outstanding. We're concerned that it is
20 going to be converted to capital, and he would increase his
21 ownership to the point where he would trigger these squeeze out
22 provisions under Polish law and --

23 THE COURT: I see. So --

24 MR. MICHAELS: -- we --

25 THE COURT: -- it is different. Okay. It is

1 different than what I thought.

2 That's going to be -- that's going to be a very unique
3 kind of injunction then. Okay.

4 MR. MICHAELS: (Unintelligible).

5 THE COURT: That would be a very unique -- to stop him
6 from, I mean, basically making loans. I mean --

7 MR. MICHAELS: It would be to restrict his use of the
8 outstanding loans and --

9 THE COURT: Okay. All right.

10 MR. MICHAELS: -- (unintelligible) --

11 THE COURT: All right. So I -- so my thought, you
12 know -- I mean, parties have been, you know, a couple of times
13 willing to enter into some kind of injunctive relief in order
14 to avoid a hearing. And, you know, you very different views.
15 I mean, you have obviously very different views of the case.

16 MR. FUKSA: Judge --

17 THE COURT: Mr. Michaels does have the fact that a
18 grand jury investigation in Poland is going on. He's not just
19 standing here, as many civil plaintiffs's lawyers do, and say,
20 they are crooks, with nothing. Okay? I mean, I mean
21 truthfully there is a -- at least convened a grand jury --

22 MR. FUKSA: And if I represented to your Honor
23 potentially that that was as a result of a conspiracy among an
24 attorney and a prosecutor, I think your Honor would have a
25 completely different view of this. Okay?